

## **§ 1803.24**

These parties shall also provide a statement as to whether or not there is any other statutory, common law, or Constitutional basis for withholding as required by §6.1(c) of this Order.

(c) *Time.* This response shall be provided expeditiously on a first-in, first-out basis taking into account the business requirements of the originator or interested parties and consistent with the information rights of members of the general public under the Freedom of Information Act and the Privacy Act.

### **§ 1803.24 Notification of decision and right of appeal.**

The Coordinator shall communicate the decision of NACIC to the requester within ten (10) days of completion of all review action. That correspondence shall include a notice of a right of administrative appeal to the Director, NACIC pursuant to §3.6(d) of this Order.

## **Subpart D—NACIC Action on MDR Appeals**

### **§ 1803.31 Requirements as to time and form.**

Appeals of decisions must be received by the Coordinator within forty-five (45) days of the date of mailing of NACIC's initial decision. It shall identify with specificity the documents or information to be considered on appeal and it may, but need not, provide a factual or legal basis for the appeal.

### **§ 1803.32 Receipt, recording, and tasking.**

The Coordinator shall promptly record each appeal received under this part, acknowledge receipt to the requester, and task the originator and other interested parties. Additional taskings, as required during the review process, shall be accomplished within ten (10) days of notification.

### **§ 1803.33 Determination by NACIC Office Chiefs.**

Each NACIC Office Chief in charge of an office which originated or has an interest in any of the records subject to the appeal, or designee, is a required party to any appeal; other interested parties may become involved through

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the request of the Coordinator when it is determined that some or all of the information is also within their official cognizance. These parties shall respond in writing to the Coordinator with a finding as to the classified status of the information including the category of protected information as set forth in §1.5 of this Order, and, if older than ten (10) years, the basis for continued classification under §§1.6 and 3.4 of this Order. These parties shall also provide a statement as to whether or not there is any other statutory, common law, or Constitutional basis for withholding as required by §6.1(c) of this Order. This response shall be provided expeditiously on a “first-in, first-out” basis taking into account the business requirements of the parties and consistent with the information rights of members of the general public under the Freedom of Information Act and the Privacy Act.

### **§ 1803.34 Appeal authority.**

The Director, NACIC will make final NACIC decisions from appeals of initial denial decisions under E.O. 12958. Matters decided by the Director, NACIC will be deemed a final decision by NACIC.

### **§ 1803.35 Action by appeals authority.**

Action by the Director, NACIC. The Coordinator shall provide a summation memorandum for consideration of the Director, NACIC; the complete record of the request consisting of the request, the document(s) (sanitized and full text) at issue, and the findings of the originator and interested parties. The Director, NACIC shall personally decide each case; no personal appearances shall be permitted without the express permission of the Director, NACIC.

### **§ 1803.36 Notification of decision and right of further appeal.**

The Coordinator shall communicate the decision of the Director, NACIC to the requester, NARA, or the particular Presidential Library within ten (10) days of such decision. That correspondence shall include a notice that an appeal of the decision may be made to the Interagency Security Classification

## National Counterintelligence Center

## § 1804.2

Appeals Panel (ISCAP) established pursuant to § 5.4 of this Order.

### Subpart E—Further Appeals

#### § 1803.41 Right of further appeal.

A right of further appeal is available to the ISCAP established pursuant to § 5.4 of this Order. Action by that Panel will be the subject of rules to be promulgated by the Information Security Oversight Office (ISOO).

## PART 1804—ACCESS BY HISTORICAL RESEARCHERS AND FORMER PRESIDENTIAL APPOINTEES PURSUANT TO SECTION 4.5 OF EXECUTIVE ORDER 12958

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AUTHORITY: Section 4.5 of Executive Order 12958 (or successor Orders) and Presidential Decision Directive/NSC 24 “U.S. Counterintelligence Effectiveness,” dated May 3, 1994.

SOURCE: 64 FR 49892, Sept. 14, 1999, unless otherwise noted.

### Subpart A—General

#### § 1804.1 Authority and purpose.

(a) *Authority.* This part is issued under the authority of and in order to implement § 4.5 of Executive Order 12958 (or successor Orders); and Presidential Decision Directive/NSC 24, U.S. Counterintelligence Effectiveness, dated May 3, 1994.

(b) *Purpose.* (1) This part prescribes procedures for:

(i) Requesting access to NACIC records for purposes of historical research, or

(ii) Requesting access to NACIC records as a former Presidential appointee.

(2) Section 4.5 of Executive Order 12958 and this part do not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, officers, or employees.

#### § 1804.2 Definitions.

For purposes of this part, the following terms have the meanings indicated:

*NACIC* means the United States National Counterintelligence Center acting through the NACIC Information and Privacy Coordinator;

*Days* means calendar days when NACIC is operating and specifically excludes Saturdays, Sundays, and legal public holidays. Three (3) days may be added to any requirement of this part if responding by U.S. domestic mail; ten (10) days may be added if responding by international mail;

*Control* means ownership or the authority of NACIC pursuant to federal statute or privilege to regulate official or public access to records;

*Coordinator* means the NACIC Information and Privacy Coordinator who serves as the NACIC manager of the historical access program established pursuant to Section 4.5 of this Order;

*Federal agency* means any executive department, military department, or other establishment or entity included in the definition of agency in 5 U.S.C. 552(f);

*Former Presidential appointee* means any person who has previously occupied a policy-making position in the executive branch of the United States Government to which they were appointed by the current or former President and confirmed by the United States Senate;

*Historian or historical researcher* means any individual with professional training in the academic field of history (or related fields such as journalism) engaged in a research project leading to publication (or any similar